

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

JEREMIAH LANE,

Petitioner,

v.

WARDEN J.V. FLOURNOY,

Respondent.

CIVIL ACTION NO.: 2:16-cv-51

ORDER and MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner Jeremiah Lane (“Lane”), who is currently incarcerated at the Federal Correctional Institution in Jesup, Georgia, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1.) Respondent filed a Motion to Dismiss, (doc. 9), and Lane filed a Response. (Doc. 10.) For the reasons which follow, I **RECOMMEND** that the Court **GRANT** Respondent’s Motion to Dismiss, **DISMISS** Lane’s Section 2241 Petition, and **CLOSE** this case. I further **RECOMMEND** that Lane be **DENIED** *in forma pauperis* status on appeal.

BACKGROUND

In 2006, Lane pleaded guilty to conspiracy to rob commercial businesses, in violation of 18 U.S.C. § 1951 (Count 1); robbery of a commercial business, in violation of 18 U.S.C. § 1951 (Count 9); and discharging a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 17). Plea Agreement, United States v. Lane, 1:06-cr-00028, (S.D. Ga. May 11, 2006), ECF No. 31. The Court sentenced Lane to a total of 207 months’ imprisonment—87 months for Counts one (1) and nine (9), to be served concurrently, and 120 months’ imprisonment for Count seventeen (17), to be served consecutively. J., United States v. Lane,

1:06-cr-00028, (S.D. Ga. Feb. 20, 2007), ECF No. 46. Consistent with the appeal waiver in his plea agreement, Lane did not file an appeal. However, on January 22, 2016, Lane filed a 28 U.S.C. § 2255 motion to vacate his sentence, which this Court dismissed as untimely. Order, United States v. Lane, 1:06-cr-00028, (S.D. Ga. Apr. 18, 2016), ECF No. 58. In May 2016, Lane filed a Motion to Reduce his Sentence, which the Court denied. Order, United States v. Lane, 1:06-cr-00028, (S.D. Ga. May 19, 2016), ECF No. 67. Lane has now filed this § 2241 petition.

DISCUSSION

In his current Petition, Lane appears to contend that: (1) he is actually innocent of the crimes for which he pled guilty; (2) he was sentenced incorrectly; and (3) he received ineffective assistance of counsel. (Doc. 1, pp. 3–5.) As Respondent aptly notes, Lane’s arguments are difficult to decipher. Asserting that “Lane does not mention the savings clause, much less attempt to meet its requirements,” Respondent contends that Lane does not satisfy the savings clause of Section 2255 and, therefore, cannot proceed pursuant to Section 2241. (Doc. 9, p. 3.) In his Response, Lane appears to reassert the claims presented in his Petition.

I. Whether Lane can Proceed Pursuant to Section 2241

Section 2241 habeas corpus petitions “‘are generally reserved for challenges to the execution of a sentence or the nature of confinement, not the validity of the sentence itself or the fact of confinement.’” Vieux v. Warden, 616 F. App’x 891, 896 (11th Cir. 2015) (quoting Bryant v. Warden, FCC Coleman-Medium, 738 F.3d 1253, 1288 (11th Cir. 2013) (emphasis omitted)). Ordinarily, an action in which an individual seeks to collaterally attack “the validity of a federal sentence must be brought under § 2255,” in the district of conviction. 28 U.S.C. § 2255(a); Turner v. Warden Coleman FCI (Medium), 709 F.3d 1328, 1333 (11th Cir. 2013). However, a petitioner, such as Lane, who has already brought a petition under Section 2255,

must obtain certification from the appropriate Court of Appeals before bringing a second or successive Section 2255 motion. 28 U.S.C. § 2255(h).

Rather than seeking permission to file a second or successive Section 2255 motion from the Eleventh Circuit Court of Appeals, Lane filed this petition for habeas corpus relief pursuant to 28 U.S.C. § 2241. To utilize Section 2241 to attack the validity of a federal sentence or conviction, a petitioner must show that the remedy afforded under Section 2255 is “inadequate or ineffective” to challenge the validity of a conviction and/or sentence. Taylor v. Warden, FCI Marianna, 557 F. App’x 911, 913 (11th Cir. 2014). 28 U.S.C. § 2255(e) expressly limits the circumstances under which a Section 2241 petition may be filed. Specifically, Section 2255(e) provides:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, **unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.**

28 U.S. C. § 2255(e) (emphasis added). The above-emphasized portion of Section 2255(e) is referred to as the “savings clause.”

In Bryant, the Eleventh Circuit articulated the requirements a petitioner must meet in order to proceed under the savings clause with a Section 2241 petition that raises sentencing claims. 738 F.3d 1253. The petitioner must establish that: (1) binding circuit precedent squarely foreclosed the claim “throughout his sentence, direct appeal, and first § 2255 proceeding”; (2) “subsequent to his first 2255 proceeding,” a Supreme Court decision overturned that circuit precedent; (3) the rule announced in that Supreme Court decision applies retroactively on collateral review; (4) as a result of the new rule, the petitioner’s current sentence exceeds the statutory maximum penalty authorized by Congress; and (5) the savings clause reaches the

petitioner's claim. Bryant, 738 F.3d at 1274 (synthesizing the savings clause tests discussed in Wofford v. Scott, 177 F.3d 1236 (11th Cir. 1999); Gilbert v. United States, 640 F.3d 1293 (11th Cir. 2011); and Williams v. Warden, Federal Bureau of Prisons, 713 F.3d 1332, 1343 (11th Cir. 2013)); see also Jeanty v. Warden, 757 F.3d 1283, 1285 (11th Cir. 2014); Mackey v. Warden, FCC Coleman, 739 F.3d 657, 661–62 (11th Cir. 2014) (approving the Bryant test factors and concluding that petitioner had satisfied all prongs thereof).

A petitioner must satisfy all five of these requirements to obtain relief. Bryant, 738 F.3d at 1274. This threshold showing is a jurisdictional requirement, and where it is absent, federal courts lack authority to consider the merits of a petitioner's Section 2241 claims. Williams, 713 F.3d at 1338; Daniels v. Warden, FCC Coleman, 538 F. App'x 850, 852 (11th Cir. 2013) (“[A] petitioner may not argue the merits of his claim until he has ‘open[ed] the portal’ to a § 2241 proceeding by demonstrating that the savings clause applies to his claim.”). Moreover, “[t]he petitioner bears the burden of coming forward with evidence affirmatively showing the inadequacy or ineffectiveness of the § 2255 remedy.” Smith v. Warden, FCC Coleman-Low, 503 F. App'x 763, 765 (11th Cir. 2013) (citation omitted). “A petitioner may not argue the merits of his claim until he has opened the portal to a § 2241 proceeding by demonstrating that the savings clause of § 2255(e) applies to his claim.” Id. (citation omitted).

Additionally, a Section 2255 motion is not “inadequate or ineffective” under the savings clause merely because Lane may be unable to comply with procedural restrictions. Jones v. Warden, FCC Coleman Medium, 520 F. App'x 942, 945 (11th Cir. 2013) (noting the mere fact that a Section 2255 motion is procedurally barred does not make that Section's remedy inadequate or ineffective); see also Hill v. Morrison, 349 F.3d 1089, 1091 (8th Cir. 2003) (stating a petitioner “has the burden of demonstrating Section 2255's relief” is “unavailable or

ineffective[],” and to do so, “there must be more than a procedural barrier to bringing a Section 2255 motion. . . . This court has held a § 2255 motion is not ‘inadequate or ineffective’ merely because ‘§ 2255 relief has already been denied[]’”) (internal citations omitted)). Lane unsuccessfully brought a Section 2255 motion in the district of his conviction. However, the potential successiveness bar in § 2255(h) does not itself render a § 2255 motion inadequate or ineffective. Gilbert, 640 F.3d at 1308. Similarly, the fact that Lane’s claims could be barred by the statute of limitations does not satisfy Section 2255(e)’s savings clause. Jones, 520 F. App’x at 945. Rather, “[w]hat makes the § 2255 proceeding ‘inadequate or ineffective’ for [a petitioner] is that he had no ‘genuine opportunity’ to raise his claim in the context of a § 2255 motion.” Zelaya v. Sec’y, Fla. Dep’t of Corr., 798 F.3d 1360, 1370 (11th Cir. 2015).

As noted above, Lane previously brought a Section 2255 motion in the district of his conviction. Lane’s Section 2255 motion was denied as being untimely filed. Order, United States v. Lane, 1:06-cr-00028, (S.D. Ga. Apr. 18, 2016), ECF No. 58. Again, the mere fact that a Section 2255 motion is procedurally barred by Section 2255’s statute of limitations or restriction on second or successive motions does not make that Section’s remedy inadequate or ineffective. See Jones, 520 F. App’x at 945 (11th Cir. 2013). Though Lane states he is proceeding under Section 2241, it is evident he is attempting to bring a second or successive Section 2255 motion pursuant to Section 2255(h).

In addition, Lane fails to set forth any newly discovered evidence which establishes his innocence or any retroactively applicable Supreme Court decision which was previously unavailable to him. Thus, Lane does not fulfill the first condition to invoke the savings clause or to proceed under Section 2255(h). Because Lane has not satisfied the savings clause, he cannot “open the portal” to argue the merits of his claim. Dean v. McFadden, 133 F. App’x 640, 642

(11th Cir. 2005). Thus, the Court need not address the relative merits of his Section 2241 petition.

For these reasons, the Court should grant Respondent's Motion to Dismiss and dismiss Lane's petition for writ of habeas corpus, which he filed pursuant to 28 U.S.C. § 2241.

II. Leave to Appeal *In Forma Pauperis*

The Court should also deny Lane leave to appeal *in forma pauperis*. Though Lane has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court's order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal of party proceeding *in forma pauperis* is not taken in good faith "before or after the notice of appeal is filed").

An appeal cannot be taken *in forma pauperis* if the trial court certifies, either before or after the notice of appeal is filed, that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. Cty. of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). Stated another way, an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is "without arguable merit either in law or fact." Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at *1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Lane's petition and Respondent's Motion to Dismiss set forth above, there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Thus, *in forma pauperis* status on appeal should be **DENIED**.

CONCLUSION

Based on the foregoing, I **RECOMMEND** that the Court **GRANT** Respondent's Motion to Dismiss, **DISMISS** Lane's Section 2241 Petition, and **CLOSE** this case. I further **RECOMMEND** that Lane be **DENIED** *in forma pauperis* status on appeal.

Any party seeking to object to this Report and Recommendation is **ORDERED** to file specific written objections within **fourteen (14) days** of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the pleading must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action.

The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence. Furthermore, it is not necessary for a party to repeat legal arguments in objections.

Upon receipt of objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United

States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge. The Clerk of Court is **DIRECTED** to serve a copy of this Report and Recommendation upon Lane and Respondent.

SO ORDERED and **REPORTED** and **RECOMMENDED**, this 15th day of July, 2016.



R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA